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sIN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 315 of 1995

The Commissioner of Income Tax ... Applicant.

vs.

M/s. Burlingtons of Bombay ..... Respondent

Mr. Parag Vyas i/b. H. D. Rathod for Applicant.
Mr. S. J. Mehta for Respondent

CORAM: V**. C. DAGA AND A. S. AGUIAR JJ.**

Date: 10th August, 2005.

P. C. :

1. By this reference, arising out of I.T.A. No. 5611 /B/87, for Assessment Year 1984-85, under section 256(1) of the Income-tax Act the Tribunal has referred the following question of law for opinion at the instance of the Revenue:

> (1) Whether on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal is justified in holding that the assessee is entitled to get deduction under section 80 HHC even in respect of the sales affected to foreigner across the counter in India on receipt of foreign exchange currency, without taking into consideration the fact that the amendment by Finance (No.2) Act, 1991, was given retrospective effect from 1.4.1986 only, in view of the difference terminology used

in the section for the period from 1.4.1983 to 1.4.1986?

2. Both counsel appearing for the rival parties agree that the above questions have been covered by decision of the Apex Court in the case of **Commissioner of Income Tax vs. Silver Arts Palace,** reported in **[2003] 259 ITR page 684**, In this view of the matter both the questions referred to us is answered in the affirmative i.e. in favour of the assessee and against the Revenue. Reference accordingly disposed of with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)

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